

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN C. SOMERS,

Plaintiff-Appellant,

v

SHARON COWELL, ROBERT FRANK MEYER
and THOMAS BROOKS,

Defendants-Appellees,

and

TOMMY COWELL and CONRAD ROBERT
PAYNE, JR.,

Defendants.

UNPUBLISHED

June 27, 2006

No. 259598

Genesee Circuit Court

LC No. 02-073608-CZ

Before: Bandstra, P.J., and Saad and Owens, JJ.

PER CURIAM.

Plaintiff appeals the grant of summary disposition to defendants on her claims of defamation and intentional infliction of emotional distress. We affirm.

Plaintiff contends that defendants, her political rivals, made defamatory comments and derogatory references about her British heritage. Plaintiff asserted that defendants implied that she was an illegal alien and, therefore, that she illegally held office as a Gaines Township trustee.¹

A defamatory communication is defined as “one that tends to harm the reputation of a person so as to lower him in the estimation of the community or deter others from associating or dealing with him.” *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 702; 609 NW2d 607 (2000). These are the elements of a cause of action for defamation:

¹ This Court reviews de novo the grant of a motion for summary disposition. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

(a) a false and defamatory statement concerning the plaintiff, (b) an unprivileged publication to a third party, (c) fault amounting at least to negligence on the part of the publisher, and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. [*Id.*]

Also, if a plaintiff is a public figure, she must establish that the defendant made the statements with actual malice. Malice is found to exist if the publication was made with knowledge of the falsity of the statements or with reckless disregard for their truth or falsity.²

Claims Against Robert Frank Meyer

Plaintiff alleged that Robert Frank Meyer made statements that implied to third parties that she was a difficult person with whom to work and that she had improperly gained entry to the United States. Plaintiff also asserted that Meyer used a derogatory term in reference to her. However, plaintiff filed her complaint in 2002, and the alleged statements were made in 1996 through 1998. Therefore, the statements fall outside the one-year statute of limitations. MCL 600.5805(9). Accordingly, the trial court correctly dismissed of claims against Meyer on statute of limitations grounds.

To avoid the time bar of the one-year statute of limitations, plaintiff says that Meyer's membership in a political committee that sought plaintiff's recall means he is liable for the committee's promulgation of rumors pertaining to her citizenship status. Plaintiff avers that this constituted a continuing violation that suspends the running of the limitations period. Contrary to plaintiff's assertion, the continuing violation doctrine has been rejected because it improperly expands time frames for initiation of litigation enacted by the Legislature. *Garg v Macomb County Community Mental Health Services*, 472 Mich 263, 282-284; 696 NW2d 646 (2005). Further, if the time bar did not exist, plaintiff failed to produce any evidence that Meyer made the defamatory statements. Plaintiff says that allegations that she failed to submit an I-9 form implies illegality and failure to maintain citizenship. However, the defense of substantial truth is available to a claim based on defamation by implication. *Hawkins v Mercy Health Services, Inc*, 230 Mich App 315, 333; 583 NW2d 725 (1998). The recall petition did not accuse plaintiff of either being an illegal alien or lacking citizenship. Rather, the recall petition merely included the accurate statement that plaintiff did not complete or submit the required I-9 form. "Truth is an absolute defense to a defamation claim." *Porter v City of Royal Oak*, 214 Mich App 478, 486; 542 NW2d 905 (1995). Because this was a truthful statement, the comment is not actionable.

Claims Against Sharon Cowell

Similarly, though plaintiff asserts that Sharon Cowell made derogatory remarks, she provides no evidence or description of any incident with sufficient specificity to maintain a claim of defamation against Ms. Cowell. Plaintiff makes unsupported claims that Cowell was involved in harassing phone calls made by her husband, Tommy Cowell. Plaintiff further argues that

² The burden is upon plaintiff to demonstrate actual malice by clear and convincing evidence. *Ireland v Edwards*, 230 Mich App 607, 615; 584 NW2d 632 (1998).

Cowell was involved in the dissemination of false and derogatory comments, but again provides no proof of any comments or statements directly attributable to Cowell. The parties were acknowledged political rivals. As our Court has previously observed, while capable of defamatory interpretation, statements that are merely “rhetorical hyperbole” are not actionable. *Kevoorkian v American Medical Association*, 237 Mich App 1, 7; 602 NW2d 233 (1999). Even if plaintiff is correct that Cowell’s actions were designed to impact plaintiff’s political standing in the community, a reckless disregard for the truth is not established simply by demonstrating that the statements were made with a preconceived objective or insufficient investigation. Spite, hatred or ill will are not sufficient, by themselves, to amount to actual malice. *Ireland, supra*, p 622.

Claims Against Thomas Brooks

Plaintiff’s claim of defamation asserted against Thomas Brooks must also fail. The only allegation against Brooks is plaintiff’s contention that he made references to her status as an “illegal alien” to local newspapers. Plaintiff produced one newspaper article in support of her contention. The article did not attribute any statements to Brooks that suggested that plaintiff was an “illegal alien.” Rather, in the article, the only individual referencing the term “illegal alien” was plaintiff in her denial of this status. Hence, plaintiff produced no evidence of any defamatory statements that are attributable to Brooks. The trial court properly granted summary disposition in favor of Brooks. *Glazer v Lamkin*, 201 Mich App 432, 439; 506 NW2d 570 (1993).

Intentional Infliction of Emotional Distress

Plaintiff contends the trial court erred in granting summary disposition in favor of Cowell on plaintiff’s claim of intentional infliction of emotional distress. Plaintiff argues that the trial court improperly refused to admit evidence of copies of magazine subscription forms allegedly submitted by Cowell without plaintiff’s authorization. The trial court’s decision whether to admit evidence is reviewed for an abuse of discretion. *Meyer v Center Line*, 242 Mich App 560, 568; 619 NW2d 182 (2000).

Plaintiff asserted that the magazine subscription forms qualified as business records, while Cowell maintained that the documents constituted hearsay. Hearsay is defined by MRE 801(C) as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Hearsay is not admissible except as allowed by the Michigan Rules of Evidence. MRE 802. An exception to the general prohibition against hearsay can be found in MRE 803(6). In accordance with the explicit and plain language of this evidentiary rule, a qualified witness is required to testify that the record sought to be admitted into evidence: (a) was made at or near the time in question; (b) by or from information transmitted by a person with knowledge; and (c) in the course of a regularly conducted business activity. MRE 803(6). Plaintiff does not deny that she failed to produce a qualified person to provide testimony pertaining to the foundation requirements necessary for admission of the proffered records.

The trial court also gave plaintiff the option to obtain certification of the authenticity of the proffered documents, but plaintiff failed to provide the certification in accordance with MRE 902(11). Therefore, it was not an abuse of discretion for the trial court to rule that the documents

were inadmissible.³ The trial court's refusal to admit the submitted forms into evidence is based solely, and correctly, on plaintiff's failure to provide for the certification or authentication of the proffered documents. Because these documents formed the basis for plaintiff's claim of intentional infliction of emotional distress, the trial court properly granted summary disposition on this issue.

Affirmed.

/s/ Richard A. Bandstra

/s/ Henry William Saad

/s/ Donald S. Owens

³ On appeal, plaintiff cites MRE 1001 in support of her claim regarding the admissibility of the documents. However, MRE 1001 is merely definitional and does not provide guidance regarding the admissibility of either "original" or "duplicate" documents. While not argued in the trial court, plaintiff now contends that MRE 1004 applies. Plaintiff's assertion is misplaced. MRE 1004 merely addresses the admissibility of other evidence when an original is not required or available because it has been "lost or destroyed," or is "not obtainable." MRE 1004(1) and (2). The mere fact that a duplicate of an original document may be admissible is distinct from requirements regarding authentication of the document in accordance with either MRE 803(6) or 902(11).